IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

FRIDAY, THE 20TH JULY 2007 / 29TH ASHADHA 1929

Crl.Rev.Pet.No. 1914 of 2005()

AGAINST THE ORDER DATED 22/07/2005 IN CMP. 4731 /2005 IN CC.1326/2001 of JUDL.MAGISTRATE OF FIRST CLASS COURT, TIRUR
.....

REVN. PETITIONER: REVISION PETITIONERS/ACCUSED NOS.1 TO 7
----

1. GAFOOR, S/O.MOIDEENKUTTY,
CHEKKINTEPURACKAL HOUSE,
MANGALAM AMSOM.

2. RAFI, S/O.MOIDEENKUTTY,
CHEKKINTEPURACKAL HOUSE,
MANGALAM AMSOM.

3. ASHRAF, S/O.BAPPU,
CHEKKINTEPURACKAL HOUSE,
MANGALAM AMSOM.

4. SAVAD, S/O.BAPPU,
CHEKKINTEPURACKAL,
MANGALAM AMSOM.

5. RAFI, S/O.KOYAKUTTY,
IDUVINTEPURAKKAL,
MANGALAM, KOOTTAYI.

6. UMMER, S/O.KHALID,
MOOSATEPURAKKAL,
MANGALAM, KOOTTAYI.

7. MANAF, S/O.ABOOBACKER,
MOOSANTEPURAKKAL,
MANGALAM, KOOTTAYI.

BY ADV. SRI.K.P.MUJEEB

RESPONDENTS: RESPONDENT

STATE OF KERLA,
REP.BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.S. SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 20/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

* * * * * * * * * * * * * * * * * * * *

Crl.R.P. No. 1914 of 2005

* * * * * * * * * * * * * * * * * * * *

Dated, this the 20th day of July 2007

ORDER

Petitioners who are accused Nos. 1 to 7 in C.C. 1326 of 2001 on the file of the J.F.C.M.-Tirur challenge the order dated 22-05-2005 passed by the J.F.C.M. dismissing C.M.P. No. 4731 of 2005 filed by the A.P.P. seeking permission of the court to withdraw the same under Section 321 Cr.P.C.

2. The learned counsel for the revision petitioner made the following submissions before me in support of the attack:-

There is a counter case also arising from the same occurrence and that had ended in acquittal. In a case as the present where the prosecution is likely to end in acquittal a petition under Section 321 Cr.P.C. would be allowed. ***(See Rahul Agarwal v. Rakesh Jain and Another 2005 AIR SCW 576)***. The court below failed to note that the discretion which has been vested by law on of the Public Prosecutor and he cannot be asked to surrender his discretion to anyone. ***(Vide Ghanshyam v. State of M.P. - 2006 (10) SCC 473***).

3. I am afraid that I cannot agree with the above submissions.

The propositions laid down in the rulings relied on by the revision petitioner are well settled and there cannot be any quarrel regarding that. Merely because the counter case ended in acquittal it does not mean that the main case also should end in acquittal. The trial court has made mention of the fact that seven persons had sustained injuries in the assault by the petitioners who were armed with deadly weapons. Most of the injuries are insized and lacerated injuries and all the injured witnesses have fully supported the prosecution case. Probably, it was fearing conviction that the corridors of power were beseached to get an order from the Government for withdrawal from prosecution. The learned Addl. Public Prosecutor was merely rendering lip-service to the Government without applying his mind. Had he applied his mind he would not have allowed a public cause to go unredressed. Any way, the court below has applied the relevant considerations while dismissing the application. I do not find any good ground to interfere with the impugned order.

This revision is accordingly dismised.

V. RAMKUMAR,

(JUDGE)

ani.